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Hon. David E. Peebles
U.S. Magistrate Judge
Federal Building and U.S. Courthouse
100 S. Clinton Street
Syracuse, NY 13261-7345

Re: *Rudd, et al. v. T.L. Cannon Corporation, et al.*
Civil Action No.: 3:10-cv-00591-TJM-DEP

Dear Judge Peebles:

By this Court's Order of February 24, 2012 (Docket No. 60), Plaintiffs, "who have not done so already," were directed that, on or before March 26, 2012, they were to respond to Defendants' outstanding interrogatories and discovery demands that were served on September 30, 2011, and to schedule a date to appear for deposition.

As this Court is aware, Defendants directed written discovery to all of the nineteen opt-in plaintiffs, but the parties initially agreed that Defendants would seek depositions of only seven of the opt-in plaintiffs. Even after this Court's Order of February 24, 2012, Plaintiffs' counsel was unable to secure six of the seven opt-in plaintiffs' appearances at a deposition. Accordingly, on March 6, 2012, in an effort to schedule at least seven depositions of the opt-in Plaintiffs by the Court's deadline of March 26, 2012, Defendants provided Plaintiffs with the names of six additional opt-in Plaintiffs for Defendants to depose. Defendants write to respectfully inform the Court that despite the efforts of counsel on both sides, as further set forth below, only one of the thirteen opt-in plaintiffs, Nichole Conner, appeared for his/her noticed deposition.

In addition, as further set forth below, Plaintiffs did not respond as ordered to Defendants' outstanding interrogatories and discovery demands. Particularly, while the opt-in Plaintiffs provided one set of written responses to Defendants' Request for Production of Document stating for each request that they would "produce all documents within their possession . . . at a date, time and location to be agreed upon by counsel," only one of the opt-in Plaintiffs has produced any documents. The remaining opt-in Plaintiffs have not otherwise responded despite Defendants' reiteration of those demands. Defendants have been informed that despite several attempts by Plaintiffs' counsel to confirm whether responsive documents exist, the opt-in Plaintiffs are not responding to counsel's inquires and are therefore not participating in discovery.

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Therefore, pursuant to this Court's Order, Defendants respectfully request that this Court "recommend the dismissal of all claims brought by the non-compliant plaintiff[s]." (Docket No. 60). Specifically, Defendants respectfully request that this Court recommend to District Judge McAvoy the dismissal of all claims brought by the non-compliant plaintiffs, as listed below with a reference to each plaintiff's non-compliance.

- Christina Apple
 - Failed to respond to Defendants' First Set of Interrogatories
 - Failed to produce documents in response to Defendants' First Request for Production of Documents
- Edward B. Arnold
 - Failed to respond to Defendants' First Set of Interrogatories
 - Failed to produce documents in response to Defendants' First Request for Production of Documents
 - Failed to appear for deposition
- Shiree Bailey
 - Failed to produce documents in response to Defendants' First Request for Production of Documents
 - Failed to appear for deposition scheduled for 10:00 a.m. on March 26, 2012 in which counsel for Defendants' appeared and incurred attendant costs and attorney's fees
 - Failed to provide verification of her Responses to Defendants' First Set of Interrogatories
- Jennifer Capra
 - Failed to produce documents in response to Defendant's First Request for Production of Documents
 - Failed to provide verification of her Responses to Defendants' First Set of Interrogatories
- Jamel Cooper
 - Failed to produce documents in response to Defendant's First Request for Production of Documents
- Matthew Ellison
 - Failed to respond to Defendants' First Set of Interrogatories
 - Failed to produce documents in response to Defendant's First Request for Production of Documents
 - Failed to appear for deposition

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- Rebecca Hill
 - Failed to produce documents in response to Defendant's First Request for Production of Documents
 - Failed to appear for deposition
 - Failed to provide verification of her Responses to Defendants' First Set of Interrogatories
- Ryan Konop
 - Failed to respond to Defendants' First Set of Interrogatories
 - Failed to produce documents in response to Defendant's First Request for Production of Documents
- Sarah Konop
 - Failed to respond to Defendants' First Set of Interrogatories
 - Failed to produce documents in response to Defendant's First Request for Production of Documents
- Morgan A. Major
 - Failed to respond to Defendants' First Set of Interrogatories
 - Failed to produce documents in response to Defendant's First Request for Production of Documents
 - Failed to appear for deposition
- Courtney Manderville
 - Failed to respond to Defendants' First Set of Interrogatories
 - Failed to produce documents in response to Defendant's First Request for Production of Documents
 - Failed to appear for deposition
- Nicole Mariani
 - Failed to appear for deposition
 - Failed to provide verification of her Responses to Defendants' First Set of Interrogatories
- Josiah McBride
 - Failed to produce documents in response to Defendant's First Request for Production of Documents
 - Failed to appear for deposition
 - Failed to provide verification of her Responses to Defendants' First Set of Interrogatories

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- Brittany McLellan
 - Failed to respond to Defendants' First Set of Interrogatories
 - Failed to produce documents in response to Defendant's First Request for Production of Documents
 - Failed to appear for deposition
- Joan Montouri
 - Failed to respond to Defendants' First Set of Interrogatories
 - Failed to produce documents in response to Defendant's First Request for Production of Documents
 - Failed to appear for deposition
- Danielle Nahari
 - Failed to produce documents in response to Defendant's First Request for Production of Documents
- Jessica Novobisiki
 - Failed to respond to Defendants' First Set of Interrogatories
 - Failed to produce documents in response to Defendant's First Request for Production of Documents
 - Failed to appear for deposition
- Diane Sukup
 - Failed to produce documents in response to Defendant's First Request for Production of Documents
 - Failed to provide verification of her Responses to Defendants' First Set of Interrogatories
- Christine Turner
 - Failed to respond to Defendants' First Set of Interrogatories
 - Failed to produce documents in response to Defendant's First Request for Production of Documents
 - Failed to appear for deposition

In sum, based on the above, Defendants respectfully request that this Court recommend to Judge McAvoy the dismissal of: Christina Apple, Edward B. Arnold, Shiree Bailey, Jennifer Capra, Jamel Cooper, Matthew Ellison, Rebecca Hill, Ryan Konop, Sarah Konop, Morgan A. Major, Courtney Manderville, Nicole Mariani, Josiah McBride, Brittany McLellan, Joan Montouri, Danielle Nahari, Jessica Novobisiki, Diane Sukup, and Christine Turner.

Additionally, several Plaintiffs not mentioned above have refused to provide verifications for their respective responses to Defendants' First Set of Interrogatories, despite repeated

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requests. Defendants respectfully request that this Court compel the following Plaintiffs to provide the required verifications: Melissa Longo, Matthew Roach and Garrett Tichen.

Respectfully submitted,

/s/ Erin W. Smith

Erin W. Smith

cc: Judge Thomas J. McAvoy
Frank Gattuso, Esq.
Michael Lingle, Esq.

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